

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY 4
05 JUL 15 PM 12:30
THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TN, JACKSON

LARRY STEVE MELTON, LARRY S. MELTON,
and R & J OF TENNESSEE, INC.,

Plaintiffs,

vs.

BANK OF LEXINGTON branch of BANK OF FRIENDSHIP,
TERESA HARRIS, B & H INVESTMENTS, INC., BENNIE
FESMIRE, DIANE TUCKER, HAROLD WALDEN
BLANKENSHIP, DEAN BLANKENSHIP, FRANKIE
STANFILL, KEVIN CARTER, The law firm of MILAM
CARTER & STANFILL, REGINA MILLER, TODD
HENDERSON, WILLIAM WILHITE, DAVID RIDDICK,
The law firm of HOLMES, RICH, SIGLER & RIDDICK,
DON WEBSTER, JIMMY BARBOUR, WALDON GWINN,
JAMES PUTNAM, TIM PILKINGTON, JAMES E. SMITH,
M.V. WILLIAMS, JR., INVESTMENT MANAGEMENT
FINANCE, INC., and JOHN DOES I, II, III, and IV,

Defendants,

HAROLD WALDEN BLANKENSHIP,

Defendant/Third Party Plaintiff,

vs.

JOHN MELTON, HOWARD DOUGLASS, AMERICAN
HOME FINANCIAL SERVICES, INC., AMERICAN
HOME FINANCIAL SERVICES II, INC., BLANKENSHIP/
MELTON AVAITION, INC., LARRY STEVE MELTON,
LARRY S. MELTON, R & J OF TENNESSEE, INC.,
BANK OF LEXINGTON, BRANCH OF FRIENDSHIP,

Third Party Defendants.

LARRY S. MELTON,

Plaintiff/Third Party Defendant/
Third Party Plaintiff,

625

vs.

BRADLEY KIRK, CARTER, STANFILL & KIRK, PLLC,
 DANIEL PERKY, SHIRLEY BLANKENSHIP, KELLY W.
 BLANKENSHIP, BLANKENSHIP CONSTRUCTION, LLC,
 BLANKENSHIP/MELTON REAL ESTATE, INC., BETH
 MALOAN, JENNIFER AZBILL, JACK HOLMES, PAUL
 PRIDY, MICKEY GRANGER, DENNIS HUBBARD,
 K.C. ARNETT, RICHARD McCORMICK, BLANKENSHIP
 BROTHERS' CONSTRUCTION COMPANY, CITY OF
 LEXINGTON, KEVIN CARTER, FRANKIE STANFILL,
 HAROLD WALDEN BLANKENSHIP, DEAN
 BLANKENSHIP, REGINA MILLER, WILLIAM WILHITE,
 DAVID RIDDICK, JIMMY BARBOUR, WALDON GWINN,
 JAMES PUTNAM, TIM PILKINGTON, JAMES E. SMITH,
 M.V. WILLIAMS, JR., BANK OF LEXINGTON, Branch of
 BANK OF FRIENDSHIP, B & H INVESTMENTS, INC.,
 BENNIE FESMIRE, DIANE TUCKER, and JOHN DOE I,

Third Party Defendants.

ORDER DISMISSING THE COUNTER CLAIMS/CROSS-CLAIMS
 OF LARRY S. MELTON AS TO DEFENDANT, BANK OF LEXINGTON, BRANCH
 OF THE BANK OF FRIENDSHIP

This matter came before this Court, upon Plaintiff/Third-Party Defendant/Third-Party Plaintiff Larry S. Melton's counterclaims and cross-claims against Defendants and Third-Party Defendant, Bank of Lexington, Branch of Bank of Friendship, and the responses of said Defendant and Third-Party Defendant to Plaintiff/Third-Party Plaintiff's counterclaims and cross-claims.

Federal Rule of Civil Procedure 14 governs third-party practice. Rule 14(a) allows for a defending party, as a third-party plaintiff to bring in "a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff." Fed. R. Civ. P. 14(a). Rule 14(b) further allows a plaintiff, upon a counterclaim being asserted against him, to bring in a

third-party “under circumstances which under this rule would entitle a defendant to do so.” Fed. R. Civ. P. 14(b). The Court finds that Larry S. Melton’s further counterclaims and cross-claims were asserted against individuals and entities who are the original Defendants in this case and thus, who are already parties to this lawsuit. Rule 14(a) therefore does not allow for third-party claims to be brought against these individuals and entities. Because the Defendants would not be allowed to bring third-party claims against these persons, the Plaintiff/Counter-Defendant also is not allowed to bring such additional claims under Rule 14(b).

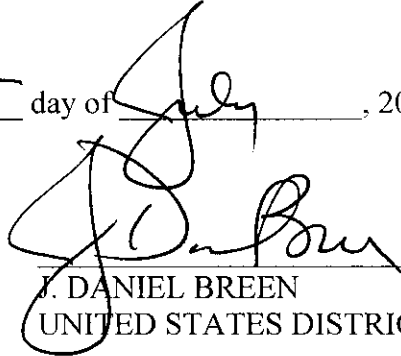
Federal Rule of Civil Procedure 15 governs amendments to pleadings and allows for such under a strict time table:

A party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served.

Fed. R. Civ. P. 15(a). A party may otherwise amend his pleading only by leave of court or by written consent of the adverse party. Id. Local Rule of Court for the Western District of Tennessee 7.2 further prescribes certain conditions for filing motions in this Court, including the requirement of a certificate that the movant has consulted with counsel and that the parties are either able or unable to reach agreement as to the issues or the action requested by the motion. L.R. 7.2(a)(1)(B). The Court finds that Plaintiff/Counter-Defendant Larry S. Melton, in filing his further counterclaims and cross-claims against the original Defendants, has not met the requirements of either Rule 15 or the Local Rules of this Court.

It is therefore ORDERED that Plaintiff Larry S. Melton's further counterclaims and cross-claims against the Defendant Bank of Lexington, Branch of the Bank of Friendship are dismissed.

IT IS SO ORDERED this 15th day of July, 2005.


J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:

HARRIS, SHELTON, HANOVER, WALSH, PLLC

By: 

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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this pleading or document was served upon counsel for each of the parties by mailing postage prepaid or by delivery to the person or office of such counsel.

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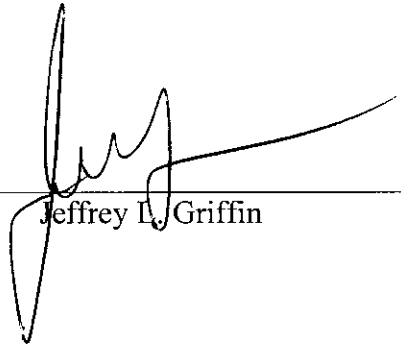
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This the 6th day of July, 2005.



Jeffrey L. Griffin



Notice of Distribution

This notice confirms a copy of the document docketed as number 625 in case 1:02-CV-01152 was distributed by fax, mail, or direct printing on July 18, 2005 to the parties listed.

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